

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION**

AMAZON.COM, INC. and AMAZON
DATA SERVICES, INC.,

Plaintiffs,

v.

WDC HOLDINGS LLC dba NORTHSTAR
COMMERCIAL PARTNERS; BRIAN
WATSON; STERLING NCP FF, LLC;
MANASSAS NCP FF, LLC; NSIPI
ADMINISTRATIVE MANAGER; NOVA
WPC LLC; WHITE PEAKS CAPITAL LLC;
VILLANOVA TRUST; CARLETON
NELSON; CASEY KIRSCHNER;
ALLCORE DEVELOPMENT LLC;
FINBRIT HOLDINGS LLC; CHESHIRE
VENTURES LLC; JOHN DOES 1-20,

Defendants.

CASE NO. 1:20-CV-484-LO-TCB

**PLAINTIFFS' MOTION & MEMORANDUM IN SUPPORT THEREOF FOR
LEAVE TO FILE UNDER SEAL CERTAIN DOCUMENTS IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO THE MOTION OF DEFENDANTS CARLETON
NELSON AND CASEY KIRSCHNER TO TRANSFER VENUE**

In accordance with the Agreed Protective Order in this case (Dkt. 55), Plaintiffs Amazon.com, Inc. and Amazon Data Services, Inc. respectfully seek leave to file under seal the unredacted version of their Opposition to the Motion of Defendants Carleton Nelson and Casey Kirschner to Transfer Venue ("Opposition"), the unredacted version of the Declaration of Lora E. MacDonald in support thereof, and Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 18, attached thereto.

Plaintiffs' Opposition contains minor redactions, and the redacted material is entirely drawn from the aforementioned Exhibits. The MacDonald Declaration contains references and descriptions of the redacted material drawn from the aforementioned Exhibits. Pursuant to the

Agreed Protective Order entered in this case, Plaintiffs have designated Exhibits 1, 2, and 18 as “Confidential” because they contain certain business development, employee personnel, sensitive financial, and business development information. Plaintiffs have also designated Exhibits 3, 4, 5, 6, 7, 8, 9, 10, and 11 as “Highly Confidential—Attorneys’ Eyes Only” because they contain sensitive financial and business information that would be detrimental if disclosed to the public. Although “the common law and the First Amendment presume a public right of access to court documents,” *Malon v. Franklin Financial Corp.*, No. 3:14CV671, 2014 WL 12768782, at *2 (E.D. Va. Dec. 4, 2014) (citing *Stone v. Univ. Md. Med. Sys. Corp.*, 855 F.2d 178, 180 (4th Cir. 1988)), “the Fourth Circuit has nonetheless stated that a district court ‘may, in its discretion, seal documents if the public’s right of access is outweighed by competing interests,’” *id.* (quoting *In re Knight Publ’g Co.*, 743 F.2d 231, 235 (4th Cir. 1984)). In determining whether to grant a motion to seal, the district court must engage with three requirements articulated by the Fourth Circuit in *Ashcraft v. Conoco, Inc.*: “[I]t must (1) provide public notice of the request to seal and allow interested parties a reasonable opportunity to object, (2) consider less drastic alternatives to sealing the documents, and (3) provide specific reasons and factual findings supporting its decision to seal the documents and for rejecting the alternatives.” 218 F.3d 288, 302 (4th Cir. 2000).

Plaintiffs’ request to seal the unredacted version of their Opposition, the unredacted version of the Declaration of Lora E. MacDonald in support thereof, and Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 18 attached thereto satisfies all three *Ashcraft* factors. Regarding the first factor, the public will have adequate notice of Plaintiffs’ request to seal, through the instant motion and notice of motion to seal as required by Local Civil Rule 5. As to the second and third *Ashcraft* factors, sealing the Confidential and Highly Confidential—Attorneys’ Eyes Only Materials is appropriate, and no less drastic alternatives to sealing exist. The materials are not publicly available, and they

wholly contain sensitive business, financial, and proprietary information. Plaintiffs therefore respectfully request that the Court grant this motion. *See, e.g., Mars, Inc. v. J.M. Smucker Co.*, No. 1:16-CV-01451-CMH-MSN, 2017 WL 11499735 (E.D. Va. Aug. 9, 2017) (granting motion to seal where “the information sought to be filed under seal may contain data and information that [were] designated as ‘Confidential,’ . . . under the Amended Protective Order governing th[e] case”); *Malon*, 2014 WL 12768782, at *3 (granting motion to seal where documents were marked “confidential” pursuant to a protective order). Pursuant to Local Civil Rule 5(C) and the Agreed Protective Order (Dkt. 55), Plaintiffs respectfully request that the Court retain the unredacted version of their Opposition, the unredacted version of the Declaration of Lora E. MacDonald in support thereof, and Exhibits 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, and 18 until ninety (90) days after entry of a final order, including any appeals.

Dated: November 9, 2020

Respectfully submitted,

s/ Travis S. Andrews

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2020, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system. I will send then send the document and a notification of such filing (NEF) to the following parties via U.S. mail to their last-known address and by email, where noted:

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